

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 7774 OF 2007

Raj Residency I Co-op.
Housing Society limited Petitioner

versus

Divisional Joint Registrar,
Co-op. Society and others Respondent.

Ms. Divya Trivedi for the petitioner
Mr. A.C.Tamhane for Respondent no.2.
Mr. Shrihari Aney Sr. adv. i/b Mr. Amit Potnis for
respondents 3 and 4.

CORAM; A.P. DESHPANDE, J.
DATED; 19TH OCTOBER, 2007

P.C.;

1. This Writ Petition is filed by the society espousing the cause of members of the Committee which has been superseded. The Deputy Registrar, after issuing show cause notice under section 78 of the Co-operative Societies Act, called upon the Committee Members as to why the committee should not be superseded and an administrator be appointed at its place. Various grounds were set out in the show cause notice and one of the said grounds is non-compliance of section 73(1AB) of the Maharashtra Co-operative Societies Act, which provides that every member shall execute a bond to the effect, within 15 days of his assuming the office, that the members of the committee

shall be jointly and severally responsible for all the decisions taken by the committee during its term relating to the business of the society and that the members of the committee shall be jointly and severally responsible for all the acts and omissions detrimental to the interest of the society. Thus sub section (1AB) obliges every Member of the Committee to execute the bond to the above effect within 15 days of assuming the office. In the present case it is an admitted position that the Committee Members did not comply with the requirement of sub section (1AB). The said sub section further provides that the member who fails to execute such bond within the specified period, shall be deemed to have vacated the office as a Member of the Committee. As referred to hereinabove, it is undisputed that the committee members have failed to comply with the mandatory obligation under section 73(1AB) and thus by operation of the deeming fiction, the committee members shall be deemed to have vacated the office.

2. The Deputy Registrar having found the committee members guilty of various acts and omissions, passed an order under section 78 after consultation with the Federal society. Instead of the committee members challenging the order passed under section 78, the society chose to file an appeal. The society cannot

be said to be an aggrieved person when the committee is superseded under section 78. Thus the society could not be said to have locus to file appeal, and the Appellate Authority has dismissed the appeal after concurring with the view taken by the Deputy Registrar. Aggrieved by the order passed by the appellate authority, the present writ petition has been filed. Yet again this writ petition is filed by the society, a juristic person, through no one, and the Committee Members are not even parties to the petition. Whereas the society is seeking orders for the protection of the Committee Members. The present petition is misconceived and cannot be entertained at the behest of the society, more so when the committee members who are unseated are not parties to this petition.

3. In the result there being no merit in the petition, the same is dismissed. At this stage, the learned counsel for the petitioner seeks stay of this order. The prayer is rejected.

...